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Written statement* submitted by Terre Des Hommes Federation Internationale, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Ending the immigration detention of children*

Immigration Detention of Children

The immigration detention of migrant children remains a subject of strong concern to the IDC, PICUM and TDH and represents a grave violation of children's rights. Every day, all around the world, millions of children are affected by immigration detention. Whether detained themselves or impacted by the detention of their parents or guardians, children are particularly vulnerable to abuse and neglect. States frequently detain children who are refugees, asylum seekers, and irregular migrants for a number of reasons, such as health and security screening, to verify their identities, or to facilitate their removal from the territory. Sometimes, children may be detained without the knowledge of the authorities, for example, because there is a failure to distinguish between child and adult migrants.

Impact on Child Health and Development

Regardless of the conditions in which children are held, a number of studies have shown that detention has a profound and negative impacton child health and development.[1] Even very short periods of detention can undermine child psychological and physical well-being and compromise their cognitive development. Children held in detention are at risk of suffering depression andanxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder (PTSD) such as insomnia, nightmares and bed-wetting. Feelings of hopelessness and frustration can manifest as acts of violence against themselves or others. Reports on the effects of immigration detention on children have found excess rates of suicide, suicide attempts and self-harm, mental disorder and developmental problems, including severe attachment disorder. They also found "marked differences between adults and children in the distress associated with various incidents."[2]

Impact on Family Care and Support

Sometimes children are detained due to their parents' or guardians' migration status or because states insist that it is in the best interests of the child to keep children with their parents in immigration detention. This is in conflict with a child's right to liberty, and may also contravene a child's individual right to seek asylum. When detention separates children from their parents or caregivers, it erodes the functioning of families. As a result, children often lose the support and protection of their parents, or are forced to take on roles beyond their level of maturity. For this reason, the CRC (Convention on the Rights of the Child) Committee has clarified that migrant families with children should be accommodated as a family in non-custodial, community-based contexts while their immigration status is being resolved.[3]

Immigration Detention is a Child Rights Violation

Children are first and foremost children, and entitled to their fundamental rights of liberty, security, health, education, and family life. Their best interests must always be the primary consideration of state decision-making. For this reason, the CRC Committee has made clear that children should never be criminalized or subject to punitive measures because of their or their parent's migration status [and that] 'the detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child."[4]

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[1] *See*, e.g. M Dudley and B Blick, Appendix E to *The heart of the nation's existence – a review of reports on the treatment of children in Australian detention centres*, ChilOut (2002); S Mares and J Jreidini, *Psychiatric assessment of children and families in immigration detention – clinical, administrative and ethical issues*, Australian and New Zealand Journal of Public Health 520 (2004); Human Rights and Equal Opportunity Commission, *A Last Resort? National Enquiry into Children in Detention* HREOC, (April 2004); Z Steel, S Momartin, C Bateman, A Hafshejani, D M Silove, N Everson, K Roy, M Dudley, I. Newman, B Blick, S; Z Steel, *The politics of exclusion and denial: the mental health costs of Australia's refugee policy*, p. 10 (May 2003).

[2] Z Steel, p. 8 (May 2003).

[3] Committee on the Rights of the Child Report of the 2012 Day of General Discussion, *The rights of all children in the context of international migration*, p. 19, paragraph 79.

[4] Ibid, p. 18, paragraph 78.

Alternatives to Detention

While globally the detention of children has been increasing, there has also been a recent move by some states to avoid detaining children consistent with international obligations. Governments are increasingly seeking innovative ways to prevent refugee, asylum seeker and migrant children from being detained in the first instance, or to expeditiously seek the release of children into child-sensitive alternatives to detention (ATD).

Instead of detaining children for immigration purposes, the CRC Committee has stated that 'to the greatest extent possible, and always using the least restrictive means necessary, States should adopt alternatives to detention that fulfil the best interests of the child, along with their rights to liberty and family life through legislation, policy and practices that allow children to remain with family members and/or guardians . . . in non-custodial, community-based contexts while their immigration status is being resolved.'[5]

The latest research indicates that such alternatives to detention not only better protect the rights of children in migration control processes, but can also result in significant benefits for the efficient functioning of migration management systems. Research shows that ATD, when implemented properly, are more effective, cheaper, and respect the human rights of migrants better than custodial detention.[6] ATD lead to high rates of compliance with migration-related decisions, high rates of voluntary return, and are on average more cost effective than traditional detention models. Building trust, respecting and valuing the dignity of the migrant, and providing a fair, transparent process are fundamental.

The Global Campaign to End Child Immigration Detention

There is also a global movement to help promote ending child immigration detention consistent with international law. The Global Campaign to End the Immigration Detention of Children, of which we are all supporters, is working with numerous state parties to make this a reality in the coming years. Examples of positive child and family ATD practices from around the globe, are being researched, explored and implemented by states together with child and migrant rights advocates, social workers, health and educational specialists.

Conclusion

The detention of children due to their or their parents' migration status can create lasting physical and psychological harms and constitutes a child rights violation. It is never in the best interests of a child to be detained for immigration purposes, and states should ensure that a minimum level of protection and support for child migrants is available in the community.

These developments have led us to set the goal of ending the practice of child immigration detention as a matter of priority within the next five years. This is an achievable priority and one that we hope to work toward together with willing states and with the support of our UN partners.

On 19 June from 2:00 – 4:00pm, we will be exploring this work in more detail and we invite you to attend a side meeting on "Ending the Immigration Detention of Children" to lend your voices to help ensure that children are never detained on the basis of their or their guardians' immigration status.

Recommendations

We make the following recommendations to states:

- Children should never be detained for migration purposes. States should expeditiously and completely end the immigration detention of children.
- The best interests of the child must be the primary consideration in any action taken in relation to child migrants.
- States should implement child-sensitive alternatives to detention.

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[5] Ibid, p. 19, paragraph 79.

[6] *See*, e.g. International Detention Coalition, *There Are Alternatives*, (2011) available at http://idcoalition.org/cap/.

* International Detention Coalition Platform for International Cooperation on Undocumented Migrants NGO(s) without consultative status, also share the views expressed in this statement.